CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:		Force		Discourt.	U.S.
Olga Bentin		Squad #4	201610498	Ø	Abuse		O.L.	☐ Injury
Incident Date(s)		Location of Incident:		P	Precinct:	18	Mo. SOL	EO SOL
Sunday, 12/11/2016 10:41 AM		§ 87(2)(b) 75 stationhouse	5th Precinct		75	6/	11/2018	6/11/2018
Date/Time CV Reported		CV Reported At:	How CV Reported	:	Date/Time	Rece	ived at CCI	RB
Tue, 12/27/2016 3:19 PM		CCRB	Phone		Tue, 12/27	7/2016	3:19 PM	
Complainant/Victim	Туре	Home Addre	ess					
Witness(es)		Home Addre	ess					
Subject Officer(s)	Shield	TaxID	Command					
1. POM Caleb Rauscher	16751	957990	075 PCT					
2. POM Robinson Polanco	19321	947362	075 PCT					
3. LT Vitaliy Zelikov	00000	936353	075 PCT					
4. SGT Douglas Ayres	01107	936160	075 PCT					
5. POM Michael Misilewich	03869	950892	075 PCT					
Officer(s)	Allegation	on			Inve	estiga	tor Recon	nmendation
A.LT Vitaliy Zelikov		ieutenant Vitaliy Zeliko in Brooklyn.	ov entered § 87(2)(b)					
B.POM Caleb Rauscher		nside of ^{§ 87(2)(b)} Caleb Rauscher drew his	in Brooklyn, Po	olice				
C.POM Caleb Rauscher	Force: In Officer C	uside of § 87(2)(b) Caleb Rauscher pointed	in Brooklyn, Pol	lice				
D.POM Caleb Rauscher		side of § 87(2)(b) Caleb Rauscher used phy	in Brooklyn, Polysical force against					
E.LT Vitaliy Zelikov		uside of § 87(2)(b) Kelikov used physical for	in Brooklyn, Lie	euter	nant			
F.LT Vitaliy Zelikov		ieutenant Vitaliy Zeliko in Brooklyn.	ov searched § 87(2)(b)					
G.LT Vitaliy Zelikov		n front of \$87(2)(b) nt Vitaliy Zelikov searc was an occupant.	in Brooklyn, hed the vehicle in w	hich				
H.LT Vitaliy Zelikov	Abuse: In Lieutena property.	n front of ^{§ 87(2)(b)} nt Vitaliy Zelikov dama	in Brooklyn, aged § 87(2)(b) s	;				
I.POM Robinson Polanco		En route to the 75th Prec Robinson Polanco did no						

Officer(s)	Allegation	Investigator Recommendation
J.POM Michael Misilewich	Abuse: En route to the 75th Precinct stationhouse, Police Officer Michael Misilewich did not obtain medical treatment for \$87(2)(b)	
K.SGT Douglas Ayres	Abuse: At the 75th Precinct stationhouse, Sergeant Douglas Ayres did not obtain medical treatment for \$87(2)(b)	

Case Summary

This case is submitted past the 90-day benchmark due to difficulties scheduling officer
interviews.
On December 27, 2016, \$87(2)(b) called the CCRB and filed this complaint.
On December 11, 2016, at approximately 8:30 a.m., §87(2)(b) had a physical
altercation with his girlfriend, \$87(2)(b) outside of \$87(2)(b) s apartment, located at
basement apartment, in Brooklyn. After the altercation, \$87(2)(b) called
911 and reported that § 87(2)(b) assaulted her.
returned to his apartment and shut the door, leaving §87(2)(b) outside.
Immediately thereafter, \$87(2)(b) heard someone yell, "Police! Open up!" followed by loud
banging on the front door. Before \$87(2)(b) could open the door, the door broke open, and
approximately four officers, identified by the investigation as Lt. Vitaliy Zelikov, PO Caleb
Rauscher, PO Robinson Polanco, and PO Michael Misilewich of the 75 th Precinct, entered the
apartment (Allegation A).
Upon entering the apartment, PO Rauscher drew and pointed his gun at §87(2)(b)
and then proceed his sun against \$27000 and then proceed his sun against \$27000 and the process of the proceed his sun against \$27000 and the process of
and then pressed his gun against \$87(2)(b) s cheek (Allegations B and C). After PO
Rauscher holstered his gun, he punched \$87(2)(5) twice in his head and three or four times in
his stomach (Allegation D). Afterwards, Lt. Zelikov approached \$87(2)(b) grabbed his head
with his both hands, and then hit the left side of \$87(2)(b) s head against the wall several
times, causing \$87(2)(b) to fall on his back (Allegation E). PO Polanco and PO Rauscher
placed \$87(2)(b) in handcuffs.
Lt. Zelikov then walked to the master bedroom and picked up a marijuana cigarette that
was in plain view on a TV stand. Lt. Zelikov walked back to the living room, and opened an
opaque black plastic bag that was lying on top of a washing machine, and looked inside
(Allegation F). Lt. Zelikov walked back to the master bedroom, opened all the drawers of a
dresser, finding a nine millimeter revolver in the top drawer (Subsumed in Allegation F). Lt.
Zelikov did not remove the revolver from the drawer, but returned to \$87(2)(b) and asked
him to sign a consent-to-search form. §87(2)(b) refused.
PO Polanco escorted \$87(2)(b) to a marked police vehicle outside. While in the
police vehicle, \$87(2)(b) heard Lt. Zelikov ask \$87(2)(b) to open the trunk of the car.
complied. Lt .Zelikov searched the car's trunk, then walked to the front of the car, got
inside, and searched underneath the front passenger and back passenger seats (Allegation G).
Additionally, §87(2)(b) alleged that in the course of the vehicle search, Lt. Zelikov broke the
glove compartment (Allegation H).
En route to the stationhouse, \$87(2)(b) complained to PO Polanco and PO
Misilewich of head pain and asked to be taken to the hospital. PO Polanco and PO Misilewich
ignored his request (Allegation I and J).
After \$87(2)(b) was brought to the stationhouse and lodged in the cell, he asked an
officer, identified by the investigation as Sgt. Douglas Ayres, to take him to the hospital
(Allegation K). Sgt. Ayres told \$87(2)(b) to wait, but \$87(2)(b) was not taken to the
hospital at any later time.
As a result of this incident, \$87(2)(b) was arrested and charged with \$87(2)(b)
was arested and charged with of the
(BR11).
There is no video footage of this incident.
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Mediation, Civil and Criminal Histories

- This case was not eligible for mediation due to §87(2)(b) s arrest.
- As of March 21, 2017, no Notice of Claim has been filed (BR02).

•	§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is § 87(2)(b) s first CCRB complaint (BR03).
- PO Caleb Rauscher has been a member of service for two year and has no prior CCRB history.
- PO Robinson Polanco has been a member of service for eight years and has no prior CCRB history.
- PO Michael Misilewich has been a member of service for five years and has a total of three previous CCRB allegations stemming from one complaint that was made against him. § 87(2)(9)
- Sgt. Douglas Ayres has been a member of service for 12 years and has total of five previous CCRB allegations stemming from four separate complaints. §87(2)(9)
 - In case #201509458, an allegation of refusal to process civilian complaint was closed as substantiated. The Board recommended Command Discipline A, and the NYPD penalty is pending.
- Lt. Vitaliy Zelikov has been a member of service for 12 years and has total of 39 previous CCRB allegations stemming from 16 separate complaints made against him. §87(2)(9)
 - In case #201103208, an allegation of premises entered and searched was closed as substantiated. The Board recommended charges. The NYPD took no disciplinary action, resulting in no penalty.
 - In case #201503516, allegations of a stop and use of nonlethal restraining device were closed as substantiated. The Board recommended Command A Discipline. The NYPD took no disciplinary action, resulting in no penalty.

Potential Issues

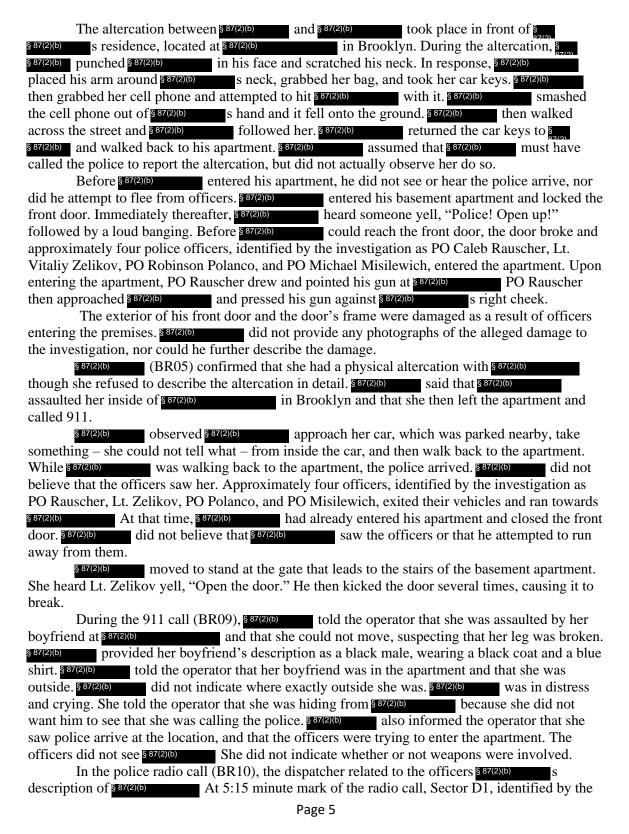
said that there was a camera in the basement apartment and that the incident could have been recorded. \$87(2)(b) asked the CCRB to contact the manager of the building, whom he identified as '\$87(2)(b) \$87(2)(b) declined to provide his full name to the investigation. He confirmed that there was a camera and said that the VCR box had been confiscated by the NYPD. The alleged video footage was requested from the 88th Precinct. The 88th Precinct (BR30) returned the request with a note that they reviewed the content of the VCR box and it did not depict the incident.

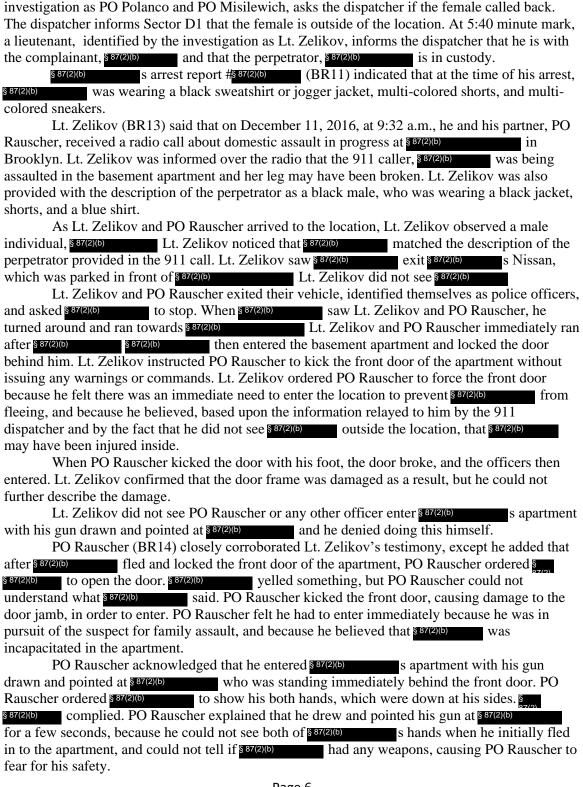
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On January 11, 2017, \$87(2)(b) the victim, was contacted by the CCRB, and she provided a brief telephone statement, but then declined to provide a sworn statement as she did not want to participate in the investigation (BR05). **Findings and Recommendations Explanation of Subject Officer Identification** (BR01) said that at unknown time while he was in the holding cell, he complained to an officer about pain to his head and asked that officer several times to take him to the hospital. The officer told \$87(2)(b) that he was "on hold," and asked him to wait. was not transported to the hospital at any later time. §87(2)(b) described the subject officer as a white male, approximately 22 or 23 years old, approximately 5'7" tall, approximately 170 pounds, with brownish blonde hair, and dressed in uniform. The Roll Call (BR06) for Tour 2 of December 11, 2016, indicated that Sgt. Douglas Ayres was working as a desk officer. The Roll Call did not list any officer assigned to cells. According to the Command Log (BR07) for December 11, 2016, §87(2)(b) was brought to the stationhouse at 10:51 a.m. Sgt. Ayres inspected cells at 11:20 a.m. According to Sgt. Ayres' NYPD Photograph (BR08), he is a white male, [87(2)] old, 6' tall, 150 pounds, with brown-blondish hair and brown eyes, Sgt. Ayres (BR24) testified that he was at the desk from 6:55 a.m. to 3:52 p.m. on December 11, 2016, and he acknowledged inspecting cells at approximately 11:20 a.m., but he did not remember § 87(2)(g) Allegations not pleaded Entry and Property Damage: It is undisputed that PO Rauscher kicked in s door to gain entry to the premises. § 87(2)(g) It is also undisputed that the manner in which officers entered the premises damaged § 87(2)(b) s door. § 87(2)(g) alleged that PO Rauscher searched § 87(2)(b) Vehicle search: § 87(2)(b) after Lt. Zelikov. § 87(2)(9) Allegation A – Abuse of Authority: Lieutenant Vitaliy Zelikov entered 887(2)(6) in Brooklyn. Allegation B – Abuse of Authority: Inside of § 87(2)(b) in Brooklyn, Police Officer Caleb Rauscher drew his gun. Allegation C – Abuse of Authority: Inside of 8 87(2)(b) in Brooklyn, Police Officer Caleb Rauscher pointed his gun at § 87(2)(b) It is undisputed that Lt. Zelikov supervised the entry into §87(2)(b) although the circumstances surrounding the entry are disputed. (BR01) stated that on December 11, 2016, at approximately 8:30 a.m., he had a physical altercation with his girlfriend, § 87(2)(b) over the ownership of their car, a gray 2011 Nissan Altima, which \$87(2)(b) wanted to take away. \$87(2)(b) explained that the car was registered under \$87(2)(b) s name, but he was making payments on it.

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PO Polanco (BR15) corroborated Lt. Zelikov's and PO Rauscher's testimonies, except he said that when he and PO Misilewich arrived at the scene, he did not see PO Polanco saw Lt. Zelikov run in the direction of PO Polanco saw Lt. Zelikov run in the direction of PO Polanco came closer, he saw Lt. Zelikov and PO Rauscher standing at the bottom of the exterior stairs that led to the basement apartment. Lt. Zelikov and PO Rauscher ordered ST(2)(0) to open the door. PO Polanco did not hear any noise coming from behind the front door, but he through a window in the front door saw a person he later identified as ST(2)(0) PO Polanco did not see PO Rauscher or any other officer enter ST(2)(0) S apartment with his gun drawn and pointed at ST(2)(0) PO Misilewich (BR25) generally corroborated PO Polanco's statement, with the following exception: by the time PO Misilewich approached the basement apartment, he saw that

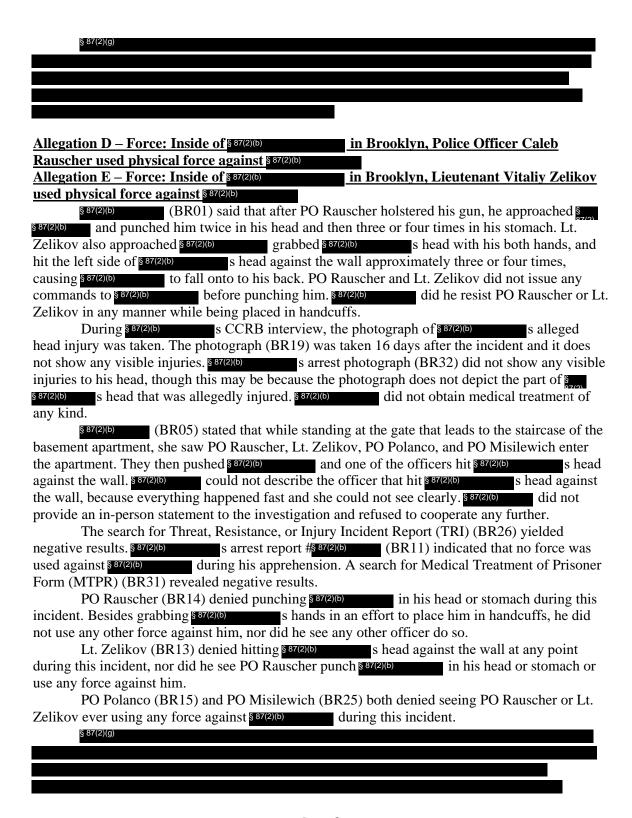
PO Misilewich (BR25) generally corroborated PO Polanco's statement, with the following exception: by the time PO Misilewich approached the basement apartment, he saw that Lt. Zelikov and PO Rauscher had already entered. PO Misilewich did not see how exactly the officers entered the apartment, but he observed damage to the front door that he could not further describe.

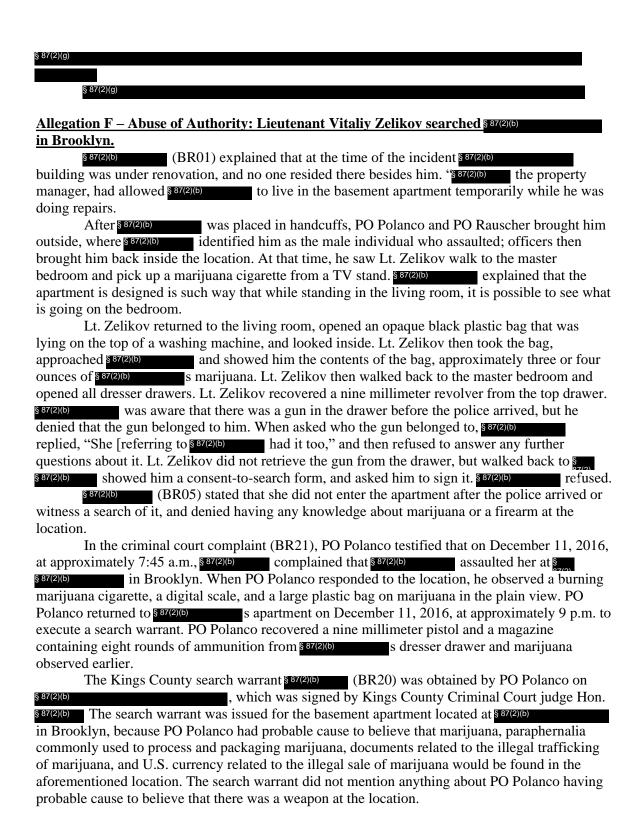
Under the "emergency doctrine," "(1)[t]he police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for assistance for the protection of life or property, (2) the search must not be primarily motivated by intent to arrest and size evidence, and (3) there must be some reasonable basis, approximating probable cause to associate the emergency with the area or place to be searched "to justify warrantless entry into a person's home. People v. DePaula, 179 A.D. 2d 424 (App. Div. 1st 1992) (BR16).

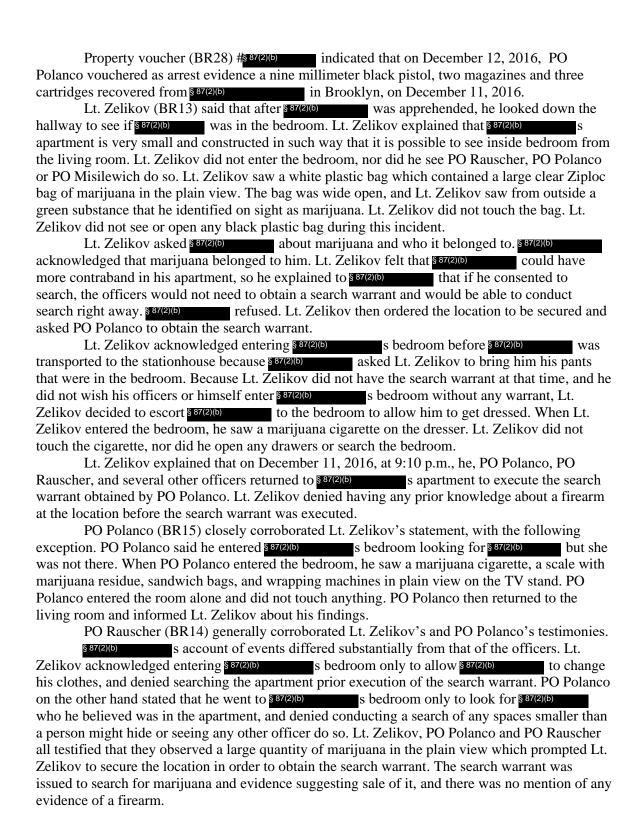
The officer may draw and point his firearm if he has a reasonable fear for his own or any other person's safety. Determination of whether the pointing of a firearm rises to the level of misconduct must be made by assessing the reasonableness of the officer's actions in the totality of the surrounding circumstances. PD v. Gliner, OATH Index No. 955/00 (BR17). The decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present. NYPD Patrol Guide, Section 221-01 (BR18).

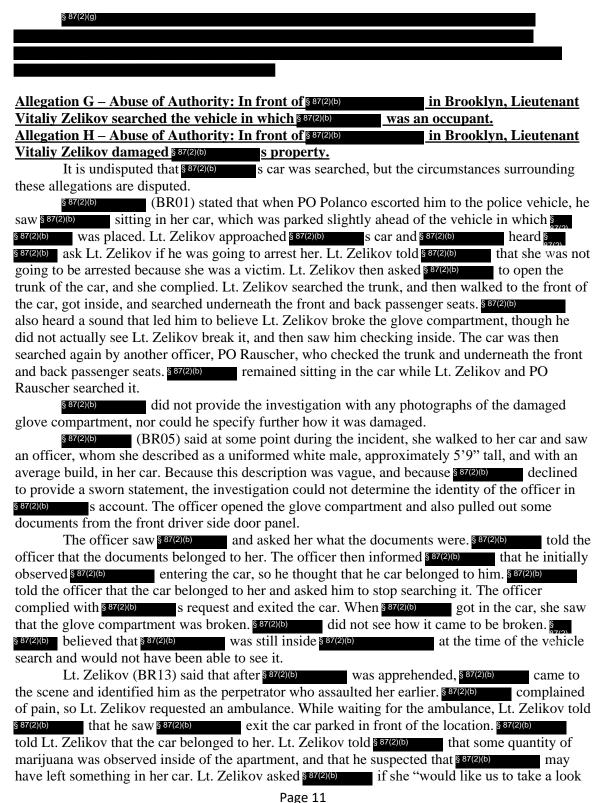
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§ 87(2)(b)	believed that his constraints whose full name § 87(2)(b)		res was witnessed by another hom he called "Shea."	
			nale prisoner known as Shea.	
	dicated that two prisoners,			
\$ 87(2)(b)	in the same cell at the sam		were neid with	l
§ 87(2)(b)			xicated when he was brought	
	ouse, and he did not remem	_	•	
	esting medical attention.		id he remember any male	
	(BR22) remember	ed a black male prisoner	was being ignored by the	
			sure what he specifically aske	.
	ht he may have asked to go			⁄U
medicine. § 87(2			complained of pain or asked t	0
be taken to the		or in any or the prisoners	complained of pain of asked to	
	_	her § 87(2)(b) and d	enied interacting with him on	
	2017. Sgt. Ayres acknowle			
	lls, which contained three m			
was	s one of these prisoners, or i	f any of the prisoners red	uested medical attention. Sgt	
Avres did not	refuse medical attention to	87(2)(b) or any oth	er prisoner.	
§ 87(2)(g)		0.5 0.5 0.5	- P	
Squad: 4				
Investigator:				
	Signature	Print	Date	
Squad Leader				
	Title/Signature	Print	Date	
Reviewer:				
	Title/Signature	Print	Date	